IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 3734 of 2007(T)

OS.560/1981 of III ADDL.M.C.,TRIVANDRUM
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PETITIONER:

DAKSHAYANI MYDHILI,
EZHUKONTHALAKKAL VEEDU,
ATTIPRA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.SUBHASH CYRIAC

RESPONDENTS:

NARAYANI BHANUMATHI,
MEDAYIL VEEDU,
VAYAKKALATHU MURI,
ATTIPRA VILLAGE,
THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 3734 OF 2007

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Dated this the 2nd day of February, 2007.

J U D G M E N T

This writ petition is filed to quash Ext.P5 order passed by the executing Court in E.P.345/03. The suit is one for recovery of possession and the Court has granted a decree in favour of the plaintiff on the basis of his title under Ext.A1 and it is that decree which is sought to be executed. Notice was issued on the execution petition and the first judgment debtor entered appearance and even challenged whether the decree holder is alive or not and a subsequent question regarding the identification of the property. The Court, in order to satisfy its conscience directed the decree holder to be present and satisfied itself about the identity of the person and thereafter held that there is no necessity to measure the property before deputing Amin for effecting delivery of the property. The present judgment debtor with both his eyes opened had contested the case and there has not been any dispute with respect to the identification of the suit property and I do not find that any issue is raised regarding the identity of the property. When there is no dispute

regarding the identification of the property in the suit itself, such a question cannot be raised at the stage of execution. Therefore, the trial court was absolutely justified in holding that there was no necessity to measure the property before Amin goes to the property to effect delivery. These are all only methods adopted to protract and prevent the decree holder from enjoying the fruits of the decree. Therefore, I do not find any merit in the writ petition and it is dismissed.

M.N. KRISHNAN, JUDGE.

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